The first Assessor said :—

"I find the accused took part in the murder but find that he did not strike the death blow."

The second Assessor said :—

"In my opinon accused took part in the murder though he may not have struck the fatal blow. Also I hold that the witness Ismail to a lesser degree and the missing Malay are also guilty."

The learned trial Judge accepted these as findings of guilty. In our opinion he should not have done so.

Accordingly, in view of the misdirection of the learned trial Judge and also because we are not satisfied that the opinions of the Assessors, as expressed by them, amount to unequivocal opinions that the appellant was guilty, we quash the conviction and order a new trial. The appellant is remanded into custody pending the new trial.

Conviction Quashed.
New Trial Ordered.

M. K. LUKSHUMEYAH vs. LOW SHONG KHAY.

[Orig. Civil Jurisdiction (Willan, C.J.) July 12, 1947]

Japanese Judgments and Civil Proceedings Ordinance 1946, Section 4 — Application to carry on proceedings instituted in Japanese Court for recovery of money alleged to be due on a promissory note — Courts (Restriction of Civil Jurisdiction) Ordinance 1946 — Moratorium Proclamation No. 5.

In this case the applicant applied under section 4 of the Japanese Judgments and Civil Proceedings Ordinance 1946 to carry on proceedings instituted at the Japanese Court in Kuala Lumpur on the 30th of June 2602 (1942). That suit was a claim for $7,245 being principal and interest alleged to be due on a promissory note. At the hearing of the application it was questioned whether the order applied for could be made in view of (1) the provisions of the Courts (Restriction of Civil Jurisdiction) Ordinance 1946 and (2) the provisions of the Moratorium Proclamation No. 5.

Held, (1) that section 9 of the Japanese Judgments and Civil Proceedings Ordinance 1946 removes the obstacle contained in the Courts (Restriction of Civil Jurisdiction) Ordinance 1946, because that section provides that the provisions of the first mentioned Ordinance shall apply notwithstanding the provisions of the second mentioned Ordinance; (2) that the provisions of the Japanese Judgments and Civil Proceedings Ordinance 1946 do not override the provisions of the Moratorium Proclamation; (3) that the claim in the Japanese Civil Suit in this case falls within the definition of "debt" in the Moratorium Proclamation and that this debt, not being a debt incurred after the date when the Moratorium came into force, is subject to the provisions of that Proclamation; (4) that therefore the application must be dismissed.

ORIGINATING SUMMONS.

R. Ramani for the applicant.

Willan, C. J. : — This is an application under section 4 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, to carry on the proceedings in Civil Suit No. 10 of 2602 (1942) instituted in the Japanese Court at Kuala Lumpur on the 30th day of June, 2602 (1942). That suit is a claim for $7,245 being principal and interest alleged to be due on a promissory note.

The Japanese Judgments and Civil Proceedings Ordinance, 1946, came into force on the 7th day of November, 1946, and an application under section 4 must be made "within three months from the commencement of this Ordinance or such extended time as the appropriate Court may allow". This application is dated the 6th day of June, 1947, and, being out of time, the applicant prays for the following order :—

(a) the time within which the applicant may apply for leave to carry on the said Civil Suit be extended so as to permit the application being made on the date hereof,
(b) that leave be granted to carry on the proceedings in the said Civil Suit as if the suit had been instituted in this Honourable Court, and
(c) that on such order being made leave be granted for the issue of a fresh summons.

Mr. R. Ramani, who appeared for the applicant, quite frankly informed me of his uncertainty as to whether such an order could be made, and, since this was an ex parte application, I am grateful to him for his assistance in putting forward arguments in favour of, and against, the application.

Since this application relates to a claim for a debt, there are two obstacles to be got over before it can be granted. They are :—

(a) The provisions of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946;
(b) The provisions of the Moratorium Proclamation No. 5.

As regards (a), section 9 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, removes the obstacle contained in the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, because that section provides that the provisions of the first mentioned Ordinance shall apply notwithstanding the provisions of the second mentioned Ordinance. By that I understand that the provisions of the Japanese Judgments and Civil Proceedings Ordinance, 1946, apply as if the Courts (Restriction of Civil Proceedings) Ordinance, 1946, had not been made; see the definition of "notwithstanding" in Stroud's Judicial Dictionary, 2nd edition, page 1295.

But the Moratorium Proclamation obstacle still remains to be got over. By section 2 thereof, "debt" is defined as including "any form of claim or obligation for the payment of money". Therefore the claim in Japanese Civil Suit No. 10 of 2602 falls within that definition and, not being a debt incurred after the date when the Moratorium Proclamation came into force — see section 6 (a) thereof — this debt is subject to the provisions of that Proclamation.

Section 5 (3) of that Proclamation reads as follows :—

> No rights, remedies or powers in respect of any such debt or bill of exchange shall, at any time, be exercised or enforced in any manner by process of law or otherwise solely by reason of non-payment as a result of the provisions of the Proclamation, but nothing shall prevent the voluntary payment of any debt.

In my view, the applicant, in applying under section 4 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, to carry on the proceedings instituted in the Japanese Court to recover the debt alleged to be due to him, is exercising a right in respect of that debt. Undoubtedly he is exercising a statutory right afforded to him by that section, and the question is whether it can be successfully argued that the provisions of the Japanese Judgments and Civil Proceedings Ordinance, 1946, which is later in time than the Moratorium Proclmation, over-ride the provisions of that Proclamation. Such an argument could be supported on the ground that section 4 of that Ordinance imposes a time limit during which applications to carry on proceedings may be made and that such time limit (ignoring the power of the Court to extend the time in which such applications may be made) has already expired.

I might have been inclined to answer that question in the affirmative if, having given an order to carry on these proceedings under section 4 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, I had power under that section to stay these proceedings until the Moratorium Proclamation is repealed. But, sub-section (2) of that section reads as follows :—

> Upon the hearing of the application the appropriate Court may order such proceedings to be carried on as though they had been instituted before the appropriate Court and may order such amendments and give such consequential or other directions in the matter as may seem just.

In my view the consequential directions which may be given under that sub-section must be of such a nature that they will advance the carrying on of the proceedings, not retard them. Hence, under that sub-section I cannot impose a stay order.

Power to impose a stay order is contained in sub-section (2) of section 3 of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, but, as I read that sub-section, that power can only be used *after* a suit has been properly instituted — by that I mean a suit which does not offend against any of the provisions of sub-section (1) of section 3 of that Ordinance — and it subsequently turns out at a later stage in the suit that one or more questions or issues arising therein offend against any of the provisions of that sub-section, and therefore prevent the Court from hearing and determining those questions or issues.

Accordingly this application must be dismissed. There is no need to make any order as to costs since this is an ex-parte application.

This decision may cause some embarrassment to persons, who, in view of the time limit imposed by section 4 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, are faced with the problem of waiting until the Moratorium Proclamation is repealed before they can apply to carry on proceedings instituted in respect of debts in a Japanese Court. In order that this difficulty may be brought directly to the notice of Government I direct that a copy of this judgment should be sent immediately to the Attorney General.

Application Dismissed.

YEE NGOK v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J.) July 14, 1947]

Minor Offences Enactment Section 35 (i) — Accused originally charged under Section 411 of the Penal Code for dishonestly retaining stolen property — Charge amended to one under Section 35 (i) of the Minor Offences Enactment at end of prosecution case — Accused not found in possession of property.

In this case the accused was originally charged under Section 411 of the Penal Code for dishonestly retaining stolen property, to wit, a new gearbox belonging to the P.W.D. At the end of the prosecution case the District Judge held that there was not sufficient evidence that the property in question was stolen property and amended the charge to one under Section 35 (i) of the Minor Offences Enactment. The accused was convicted on this charge and sentenced to 3 months r.i. He appealed against sentence. The accused was not found in actual possession of the property, which was found in the possession of a Malay, who gave evidence at the trial, saying that he had been asked by the accused to sell the property. This witness also said that he had previously seen the property in the accused's truck and that he had taken it to accused's house at the request of the accused.

Held, (1) that as the accused was not found in actual possession of the property the conviction under Section 35 (i) of the Minor Offences Enactment, cannot stand, (2) further following **Regina v. Kwek Chang Seng**[2] that possession under Section 35 (i) of the Minor Offences Enactment only applies to possession in the streets or in a public place and not to possession in a house, (3) that on the facts there was evidence which, if believed,